Tax Immunity

BECAUSE OF THE SOVEREIGNTY of the United States, federally owned lands cannot be taxed by state or local governments. This has created large and increasing problems for the states within whose borders such lands lie. The problems are particularly felt in the West where most public lands [1] are concentrated and where, as previously shown in this report, federally owned lands often constitute a large proportion of a state's total area. But the situation, concerning which the Commission is required to make recommendations, is not confined to the West. Eleven nonwestern states each contain more than 1 million acres of Federal land, ranging from approximately 8 percent of the total area of Arkansas to 3.2 percent of Georgia. In addition, West Virginia contains 920,212 acres of public lands (5.9 percent of the state's total acreage); South Carolina 680,265 acres (3.5 percent); New Hampshire 678,807 acres (11.8 percent); and Vermont 240,238 acres (4.0 percent) (in each state there are also other Federally owned lands).

Originally, the Federal ownership of land was considered, in general, to be temporary. Under Federal policy and laws the pubilc domain passed into private ownership and thereupon became subject to state and local taxation. The retention by the Federal Government of comparatively small amounts of land for military or other Federal purposes seemed to pose no serious problem for the future, and even in 1872, when a large tract in Wyoming was set aside to establish Yellowstone National Park, it was still generally assumed that almost all of the rest of the Nation's public domain would eventually be transferred to private ownership.

In 1891, however, with passage of the act that authorized the President to set aside forest reservations, a major break with the past occurred. As large tracts of forest land were set aside as reserves, it became obvious that millions of acres of the public domain would be retained and managed permanently by the United States and would never pass into private ownership.[2]

The impact on the taxability of state and local governments by the Federal Government's retention of the forest lands caused concern at an early date, and in 1907 Congress authorized the return of 25 percent of stumpage sale receipts to the counties in which the timber was cut to be used for public education and roads.[3]

In 1920, the Federal Government acted similarly when the Mineral Leasing Act [4] of that year removed from the operation of the Mining Law certain minerals, including oil and gas deposits, and thus assured that lands chiefly valuable for those minerals would remain in Federal ownership. As part of the Mineral Leasing Act, Congress authorized sharing with the states the receipts generated by the oil and gas leases, giving the state of origin 37½ percent of the revenue, the Reclamation Fund 52½ percent, and permitting the United States to keep only 10 percent for its cost of administration. The only exception is that Alaska receives 90 percent of oil and gas lease revenues in accordance with the provisions of the Mineral Leasing Act.[5] Several other, but relatively minor revenue-sharing programs were also developed, both before and after the two mentioned above, but payments made by the Federal Government to the states for such programs have been comparatively small.[6]

[1] As used here the term "public lands" refers only to those lands coming within the definition of that term in section 10 of the Commission's Organic Act, as quoted in the Introduction and printed in full in Appendix A.

[2] The 1891 Act, as amended, is 16 U.S.C. § 471 (1964). Today the total of lands administered by the Forest Service has grown to over 186.9 million acres in 44 states. Of the total, 160.8 million acres came from public domain lands, and the rest was acquired from non-Federal sources. For a breakdown of acreage by states, see Appendix F.

[3] 16 U.S.C. § 500 (1964).

[4] 30 U.S.C. § 181 et seq. (1964).

[5] 30 U.S.C. § 191 (1964).

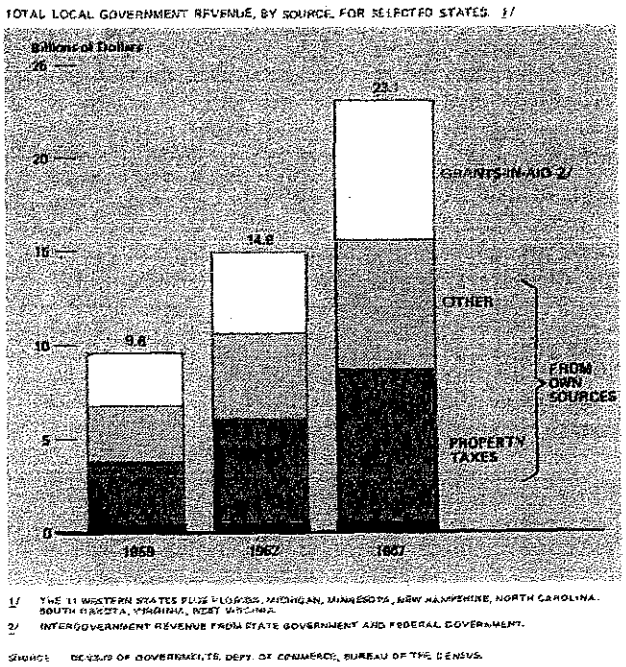
[6] A breakdown of all programs and payments is contained in EBS Management Consultants, Inc., *Revenue Sharing and Payments in Lieu of Taxes*, Pt. 2. PLLRC Study Report, 1968.

The legislative history of the acts providing for the sharing of receipts from forest products and oil and gas, as well as other leasable minerals, clearly reflects that the payments to the states and local governments were intended as compensation for the fact that the lands in question would no longer be available for private ownership and property taxation.

Today, however, the pressure of new circumstances requires new thinking. Until comparatively recently, the cost of providing state and municipal services, especially in the western public land states whose vast spaces had a sparse population and received relatively few outside visitors, was not very great. But in recent years, a dramatic change has resulted from the greatly increased mobility of the American people. Visitors who now come in increasing numbers to public land areas from all over the country require, as a minimum, the same services that are furnished to local citizens—and sometimes they require more.

At the same time, state and local government expenditure levels and revenue requirements have vastly increased. In 1940, prior to World War II, the combined spending of state and local governments was approximately $9.3 billion. Ten years later, in 1950, it had risen to approximately $22.8 billion. In 1969, the figure exceeded $100 billion.

In the meantime, while state and local revenue needs have been growing, the recent years have seen a greatly expanded increase in the acreage of lands



Local government depends heavily on property taxes for revenue it raises from its own sources.

permanently set aside by the United States for various purposes. From relatively modest beginning, for example, there are now 18,564,079 acres of public domain under the jurisdiction of the National Park Service, with an additional 4,735,818 acres acquired for the National Park System, or a total of 23,299,897 acres spread among 44 states [7] and over 26 million acres set aside for the Wildlife Refuge System in all 50 states.

The largest portion of the public domain, more than 465 million acres, including 295 million acres in Alaska, is under the jurisdiction of the Bureau of Land Management of the Department of the Interior. Except for those lands that may be transferred to the states to satisfy land grants, this large acreage comprises, for the most part, what is known as the vacant unappropriated public domain, and was previously assumed to be destined for private ownership. But since the passage of the Taylor Act in 1934,[8] the transfer of these public domain lands to private ownership has slowed considerably. In the last decade, it has dwindled to a trickle while awaiting the enactment of legislation suited to the needs of today and tomorrow.

If the recommendations of this Commission are followed, additional millions of acres of public domain land will be retained by the Federal Government instead of being transferred, as contemplated until relatively recent times, to private ownership. With the millions of acres of land already reserved, plus the additional acres that probably will be set aside, the United States must re-examine its relationship to the state and local governments within whose borders those lands are located.

Payments to Compensate for Tax Immunity

Recommendation 101: If the national interest dictates that lands should be retained in Federal ownership, it is the obligation of the United States to make certain that the burden of that policy is spread among all the people of the United States and is not borne only by those states and governments in whose area the lands are located.

Therefore, the Federal Government should make payments to compensate state and local governments for the tax immunity of Federal lands.

The study made for this Commission confirms the contention of state and county government officials that shared revenues amount to much less than the

[7] For breakdown by states, see Commission staff, *Inventory Information on Public Lands*. PLLRC Study Report, 1970.

[8] 43 U.S.C. § 315 et seq. (1964).

revenues they would collect if the lands were in private ownership and subject to taxation.[9] While the bulk of the states analyzed were in the West, detailed studies of counties in other parts of the country demonstrated that the situation is similar everywhere.[10]

The fact that the lands on the tax rolls would have brought in a greater revenue should not by itself be considered persuasive. It is, however, a compelling indicator of both the magnitude of an existing problem and the impact of the present system.

This Commission is convinced that the United States must make some payments to compensate state and local governments which have burdens imposed on them because of Federal ownership of public lands within their borders. Even though it is recognized that Federal expenditures must be held to the minimum necessary to provide essential Federal programs, the Federal Government, as a landowner, must pay its way. Whatever the costs, fairness and equity demand that such payments be made.

Manner of Making Payments

> Recommendation 102: Payments in lieu of taxes should be made to state governments, but such payments should not attempt to provide full equivalency with payments that would be received if the property was in private ownership. A public benefits discount of at least 10 percent but not more than 40 percent should be applied to payments made by the Government in order to give recognition to the intangible benefits that some public lands provide, while, at the same time, recognizing the continuing burdens imposed on state and local governments through the increased use of public lands. The payments to states should be conditioned on distribution to those local units of government where the Federal lands are located, subject to criteria and formulae established by the states. Extraordinary benefits and burdens should be treated separately and payments made accordingly.

A system of payments in lieu of taxes provides a better standard for determining the level of payments than does a system of sharing revenue. Just as in their relationship to private property, state and local governments are, in general, constitutionally responsible for providing the ordinary functions of government to the public land areas within their borders. Federal ownership, in other words, does not mean that the Federal Government has assumed fiscal responsibility for the administration of all aspects of those lands. But, the system of revenue sharing bears no relationship to the direct or indirect burdens placed on state and local governments by the Federal lands within their boundaries.

In practice, there has been no attempt made to correlate the services rendered, or the burdens assumed, by the local governments to the payments they receive under the present revenue-sharing systems. As a result, the portion of Federal revenues which they currently receive varies from 5 to 90 percent, depending on the program and Federal agency involved.

Although they were originally designed to offset the tax immunity of Federal lands, the existing revenue-sharing programs do not meet a standard of equity and fair treatment either to state and local governments or to the Federal taxpayers. Such a standard should be established and applied.

In addition, the Commission's review has revealed several defects in the revenue-sharing system. In some cases, payments made by Federal programs undercompensate, while in others they overcompensate. The revenue-sharing programs, moreover, do not apply to many federally owned lands, and where they do apply, management decisions often reduce or eliminate the revenue base upon which the payments to state and local governments depend. At the same time, pressures can be generated to institute programs that will produce revenue, though such programs might be in conflict with good conservation-management practices.

The Commission has thus concluded that the existing system of revenue sharing is not equitable, and that the Federal taxpayer is financing a program that has little relation to the purpose it was originally designed to accomplish.

It is axiomatic that expenditure requirements determine the tax levels needed to produce the revenue to meet the costs of government. Since the *ad valorem* tax system has been the foundation for the financing of programs providing municipal services, the Commission believes that all landowners must share in payment for these services. This should not exclude the Federal Government as a landowner, except

[9] EBS Management Consultants, Inc., *Revenue Sharing and Payments in Lieu of Taxes*, Pt. 4. PLLRC Study Report, 1970, for a detailed analysis of revenue sharing and payments in lieu of taxes related to public lands in five states and 50 counties.

[10] For example, in Carroll County, New Hampshire, where 24 percent of the land is in national forest, total benefits to the county from both Federal revenue sharing payments and indirect benefits in 1966 amounted to $21,291. The estimated potential tax revenue to the county from the Federal lands, if assessed and taxed on the same basis as privately owned lands of similar character, was estimated at $151,420. In Gogebic County, Michigan, the potential tax revenue was estimated, likewise, at $251,840 from national forest lands, as compared to direct and indirect benefits of $149,581 in 1966.

where the federally owned land is being used for facilities, as in the case of post offices, to furnish services to all the people throughout the country.

Believing, as the Commission does, that the tax level represents the actual need for revenue, Federal payments related to the level of state and local taxes levied on private owners should be in proportion to the services received and burdens imposed by Federal ownership. At the same time, to repeat, they should be fair and equitable to all concerned.

Level of Payments

While the Commission is convinced that payment should be related to actual property taxes in the area, it does not follow that the payments should be equal to full tax equivalency.

Under the existing system, certain benefits are received by local governments. For example, probably because it pays no taxes, the Federal Government permits state and local governments to use its land without charge for such facilities as airports and cemeteries, and allows them to take sand and gravel without cost. In addition, the Federal landowner provides fire protection for its own lands where fire is a major threat, thereby relieving the state and local governments of that cost. There are also indirect benefits, like the use of roads, which Federal agencies construct and maintain.

Though the Commission's studies have proved that these direct and indirect benefits cannot be calculated with any degree of precision, the Commission believes that some reduction in payments should be made for the measurable as well as the immeasurable benefits which accrue to the communities in which there are concentrations of Federal lands.[11]

After careful consideration, the Commission has concluded that fairness will best be served by deducting—as recognition of the direct and indirect benefits received by state and local governments from the use of public lands—not less than 10 percent nor more than 40 percent of the amount necessary to provide full tax equivalency.

At the same time, the Commission has concluded that while benefits are national, the geographic distribution of the Federal lands makes their burdens regional and local, and that, in general, continued Federal ownership of public lands provides no distinguishable benefits to state and local governments in lieu of the benefits they would receive if the lands were privately owned.

[11] EBS Management Consultants, Inc., *Revenue Sharing and Payments in Lieu of Taxes*, Pt. 4. PLLRC Study Report, 1970. The great variety of indirect benefits, which include use of Federal facilities and lands for some purposes, availability of Federal employees to provide exeprtise in some cases, and joint use of Federal roads and facilities in some cases, differ widely from one location to another.

Extraordinary Benefits and Burdens

From time to time, certain extraordinary benefits may be obtained, or burdens imposed, as a result of Federal ownership of public lands. The Commission does not believe that they should be taken into consideration in establishing the basic formulae of Federal payments. Whatever their cost may be, they should be negotiated separately, and a separate payment should be arranged.

If a state or local government, for example, was required to give the Federal Government services, such as increased police protection, over and above what it provided to regular taxpayers, it could and should suggest the negotiation of a contract with the Federal Government. If the Federal Government thought the local government was charging too much for such special services, it could seek other arrangements.

The important point is that under a payments-in-lieu-of-taxes system, the Federal Government would expect, and would be entitled to, the same services received by a regular taxpayer from the state and local governments—no more and no less.

Unit of Government to Receive Payment

The governmental unit that supplies the services, usually the county or municipality, should receive the Federal payments in lieu of taxes. But, under our Federal system, the national Government should deal solely with the state government, which should make proper allocations within the state.

In this connection, the Commission recognizes that in many instances, state tax-equalization programs redistribute all categories of funds. While this is a matter of state policy, concerning which the Federal Government should take no position, the Commission's contractor study showed that generally these programs must supplement local tax revenues from general state funds to a greater degree in areas of public land concentrations than elsewhere.

Different Land Categories

The Commission believes that it would be impractical to exclude from the program any types or categories of lands because the impact of different classes of land is uneven. Under existing revenue-sharing systems, no payments are made for national parks, military reservations, and reclamation reservations. Yet, there is no evidence that the economic benefits flowing from the activities carried on at these lands would not be equalled or exceeded if the lands were privately owned and were part of the local tax base.

31 UNITED STATES CODE
TITLE 31--MONEY AND FINANCE
SUBTITLE V--GENERAL ASSISTANCE ADMINISTRATION
CHAPTER 69--PAYMENT FOR ENTITLEMENT LAND
(also known as P.L. 97-258, as amended)

Sec. 6901. Definitions

In this chapter--

(1) "entitlement land" means land owned by the United States Government--

(A) that is in the National Park System or the National Forest System, including wilderness areas and lands described in section 2 of the Act of June 22, 1948 (16 U.S.C. 577d), and section 1 of the Act of June 22, 1956 (16 U.S.C. 577d-1);

(B) the Secretary of the Interior administers through the Bureau of Land Management;

(C) dedicated to the use of the Government for water resource development projects;

(D) on which are located semi-active or inactive installations (except industrial installations) that the Secretary of the Army keeps for mobilization and for reserve component training;

(E) that is a dredge disposal area under the jurisdiction of the Secretary of the Army;

(F) that is located in the vicinity of Purgatory River Canyon and Pinon Canyon, Colorado, and acquired after December 23, 1981, by the United States Government to expand the Fort Carson military installation; or

(G) that is a reserve area (as defined in section 401(g)(3) of the Act of June 15, 1935 (16 U.S.C. 715s(g)(3))).

(2)(A) 'unit of general local government' means-

"(i) a county (or parish), township, borough, or city (other than in Alaska) where the city is independent of any other unitof general local government, that-

"(I) is within the class or classes of such political subdivisions in a State that the Secretary of the Interior, in his discretion, determines to be the principal provider or providers of governmental services within the State; and

"(II) is a unit of general government as determined by the Secretary of the Interior on the basis of the same principles as were used on January 1, 1983, for general statistical purposes;

"(ii) any area in Alaska that is within the boundaries of a census area used by the Secretary of Commerce in the decennial census, but that is not included within the boundary of a governmental entity described under clause (i);

"(iii) the District of Columbia;

"(iv) the Commonwealth of Puerto Rico;

"(v) Guam; and

"(vi) the Virgin Islands.

"(B) the term 'governmental services' includes, but is not limited to, those services that relate to public safety, the environment, housing, social services, transportation, and governmental administration.".

Sec. 6902. Authority and Eligibility

(a) The Secretary of the Interior shall make a payment for each fiscal year to each unit of general local government in which entitlement land is located, as set forth in this chapter. A unit of general local government may use the payment for any governmental purpose.

(b) A unit of general local government may not receive a payment for land for which payment under this Act otherwise may be received if the land was owned or administered by a State or unit of general local government and was exempt from real estate taxes when the land was conveyed to the United States except that a unit of general local government may receive a payment for--

(1) land a State or unit of general local government acquires from a private party to donate to the United States within 8 years of acquisition;

(2) land acquired by a State through an exchange with the United States if such land was entitlement land as defined by this chapter;

or

(3) land in Utah acquired by the United States for Federal land, royalties, or other assets if, at the time of such acquisition, a unit of general local government was entitled under applicable State law to receive payments in lieu of taxes from the State of Utah for such land: Provided, however, That no payment under this paragraph shall exceed the payment that would have been made under State law if such land had not been acquired.

Sec. 6903. Payments

(a) In this section--

(1) "payment law" means--

(A) the Act of June 20, 1910 (ch. 310, 36 Stat. 557);

(B) section 33 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1012);

(C) the Act of May 23, 1908 (16 U.S.C. 500);

(D) section 5 of the Act of June 22, 1948 (16 U.S.C. 577g, 577g-1);

(E) section 401(c)(2) of the Act of June 15, 1935 (16 U.S.C. 715s(c)(2));

(F) section 17 of the Federal Power Act (16 U.S.C. 810);

(G) section 35 of the Act of February 25, 1920 (30 U.S.C.191);

(H) section 6 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 355);

(I) section 3 of the Act of July 31, 1947 (30 U.S.C. 603); and

(J) section 10 of the Act of June 28, 1934 (known as the Taylor Grazing Act) (43 U.S.C. 315i).

(2) population shall be determined on the same basis that the Secretary of Commerce determines resident population for general statistical purposes.

(3) a unit of general local government may not be credited with a population of more than 50,000.

(b)(1) A payment under section 6902 of this title is equal to the greater of--

(A) 93 cents during fiscal year 1995, $1.11 during fiscal year 1996, $1.29 during fiscal year 1997, $1.47 during fiscal year 1998, and $1.65 during fiscal year 1999 and thereafter, for each acre of entitlement land located within a unit of general local government (but not more than the limitation determined under subsection (c) of this section) reduced (but not below 0) by amounts the unit received in the prior fiscal year under a payment law; or

(B) 12 cents during fiscal year 1995, 15 cents during fiscal year 1996, 17 cents during fiscal year 1997, 20 cents during fiscal year 1998, and 22 cents during fiscal year 1999 and thereafter, for each acre of entitlement land located in the unit (but not more than the limitation determined under subsection (c) of this section).

(2) The chief executive officer of a State shall submit to the Secretary of the Interior a statement on the amounts of payments the State transfers to each unit of general local government in the State out of amounts received under a payment law.

(c)(1) The limitation for a unit of general local government with a population of not more than 4,999 is the highest dollar amount specified in paragraph (2).

(2) The limitation for a unit of general local government with a population of at least 5,000 is the following amount (rounding the population off to the nearest thousand):

If population equals-- the limitation is equal to the population times--

5,000..... $110.00
6,000..... 103.00
7,000..... 97.00
8,000..... 90.00
9,000..... 84.00
10,000..... 77.00
11,000..... 75.00
12,000..... 73.00
13,000..... 70.00

14,000	68.00
15,000	66.00
16,000	65.00
17,000	64.00
18,000	63.00
19,000	62.00
20,000	61.00
21,000	60.00
22,000	59.00
23,000	59.00
24,000	58.00
25,000	57.00
26,000	56.00
27,000	56.00
28,000	56.00
29,000	55.00
30,000	55.00
31,000	54.00
32,000	54.00
33,000	53.00
34,000	53.00
35,000	52.00
36,000	52.00
37,000	51.00
38,000	51.00
39,000	50.00
40,000	50.00
41,000	49.00
42,000	48.00
43,000	48.00
44,000	47.00
45,000	47.00
46,000	46.00
47,000	46.00
48,000	45.00
49,000	45.00
50,000	44.00

(d) On October 1 of each year after the date of enactment of the Payment in Lieu of Taxes Act, the Secretary of the Interior shall adjust each dollar amount specified in subsections (b) and (c) to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor, for the 12 months ending the preceding June 30.

Sec. 6904. Additional payments

(a) In addition to payments the Secretary of the Interior makes under section 6902 of this title, the Secretary shall make a payment for each fiscal year to a unit of general local government collecting and distributing real property taxes (including a unit in Alaska outside the boundaries of an organized borough) in which is located an interest in land that--

(1) the United States Government acquires for--

(A) the National Park System; or

(B) the National Forest Wilderness Areas; and

(2) was subject to local real property taxes within the 5-year period before the interest is acquired.

(b) The Secretary shall make payments only for the 5 fiscal years after the fiscal year in which the interest in land is acquired. Under guidelines the Secretary prescribes, the unit of general local government receiving the payment from the Secretary shall distribute payments proportionally to units and school districts that lost real property taxes because of the acquisition of the interest. A unit receiving a distribution may use a payment for any governmental purpose.

(c) Each yearly payment by the Secretary under this section is equal to one percent of the fair market value of the interest in land on the date the Government acquires the interest. However, a payment may not be more than the amount of real property taxes levied on the property during the last fiscal year before the fiscal year in which the interest is acquired. A decision on fair market value under this section may not include an increase in the value of an interest because the land is rezoned when the rezoning causes the increase after the date of enactment of a law authorizing the acquisition of an interest under subsection (a) of this section.

(d) The Secretary may prescribe regulations under which payments may be made to units of general local government when subsections (a) and (b) of this section will not carry out the purpose of subsections (a) and (b).

Sec. 6905. Redwood National Park and the Lake Tahoe Basin

(a) The Secretary of the Interior shall make a payment for each fiscal year to each unit of general local government in which an interest in land owned by the United States Government in the Redwood National Park is located. A unit may use the payment for any governmental purpose. The payment shall be made as provided in section 6903 of this title and shall include an amount payable under section 6903.

(b)(1) In addition to payments the Secretary makes under subsection

(a) of this section, the Secretary shall make a payment for each fiscal year to each unit of general local government in which is located an interest in land--

(A) owned by the Government in the Redwood National Park; or

(B) acquired in the Lake Tahoe Basin under the Act of December 23, 1980 (Public Law 96-586, 94 Stat. 3383).

(2) The payment shall be made as provided in section 6904 of this title and shall include an amount payable under section 6904. However, an amount computed but not paid because of the first sentence of subsection (b) and the 2d sentence of subsection (c) of section 6904 shall be carried forward and applied to future years in which the payment would not otherwise equal the amount of real property taxes assessed and levied on the land during the last fiscal year before the fiscal year in which the interest was acquired until the amount is applied completely.

(3) The unit of general local government may use the payment for any governmental purpose.

(4) The Redwoods Community College District is a school district under section 6904(b) of this title.

Sec. 6906. Authorization of appropriations

Necessary amounts may be appropriated to the Secretary of the Interior to carry out this chapter. Amounts are available only as provided in appropriation laws.

Sec. 6907. State legislation requiring reallocation or redistribution of payments to smaller units of general purpose government

(a) Notwithstanding any other provision of this chapter, a State may enact legislation which requires that any payments which would be made to units of general local government pursuant to this chapter be reallocated and redistributed in whole or part to other smaller units of general purpose government which (1) are located within the boundaries of the larger unit of general local government, (2) provide general governmental services and (3) contain entitlement lands within their boundaries. Such reallocation or redistribution shall generally reflect the level of services provided by, and the number of entitlement acres within, the smaller unit of general local government.

(b) Upon enactment of legislation by a State, described in subsection (a), the Secretary shall make one payment to such State equaling the aggregate amount of payments which he otherwise would have made to units of general local government within such State pursuant to this chapter. It shall be the responsibility of such State to make any further distribution of the payment pursuant to subsection (a). Such redistribution shall be made within 30 days after receipt of such payment. No payment, or portion thereof, made by the Secretary shall be used by any State for the administration of this subsection or subsection (a).

(c) Appropriations made for payments in lieu of taxes for a fiscal year may be used to correct underpayments in the previous fiscal year to achieve equity among all qualified recipients.

ADMINISTRATION UNDER Docket # IBLA 2009-44
SUPPLEMENT TO TODD DEVLIN'S FORMAL PROTEST OF PILT

Payment in lieu of taxes is memorialized in the law under:

31 UNITED STATES CODE
TITLE 31--MONEY AND FINANCE
SUBTITLE V--GENERAL ASSISTANCE ADMINISTRATION
CHAPTER 69--PAYMENT FOR ENTITLEMENT LAND
(also known as P.L. 97-258, as amended)

The real question in the appeal and protest are a combination of the following three issues:

1. Does the Department of Interior and BLM, when calculating the PILT formula, have to follow a 7.5 to 1 ratio between Alternative A and Alternative B as described in USC?
2. When the PILT Code and Regulation are using the word "payment"; in what context and definition are they using the word?
3. Where is the correct place in the PILT calculation to prorate the funding when allocation is less than full appropriation?

Question 1.

Does the Department of Interior and BLM, when calculating the PILT formula, have to have a 7.5 to 1 ratio between Alternative A and Alternative B as described in USC?
My conclusion: Yes
The USC states as below:

"(b)(1) A payment under section 6902 of this title is equal to the greater of--
(A) 93 cents during fiscal year 1995, $1.11 during fiscal year 1996, $1.29 during fiscal year 1997, $1.47 during fiscal year 1998, and $1.65 during fiscal year 1999 and thereafter, for each acre of entitlement land located within a unit of general local government (but not more than the limitation determined under subsection (c) of this section) reduced (but not below 0) by amounts the unit received in the prior fiscal year under a payment law; or

(B) 12 cents during fiscal year 1995, 15 cents during fiscal year 1996, 17 cents during fiscal year 1997, 20 cents during fiscal year 1998, and 22 cents during fiscal year 1999 and thereafter, for each acre of entitlement land located in the unit (but not more than the limitation determined under subsection (c) of this section)."

Prior to 1995 and after 1998 the ratio between Alternative A and Alternative B is 7.5 to 1. As you will see below, the reason that it was not 7.5 to 1 from 1995, 1996, 1997, and 1998 was because of ease of calculation, understanding, and explanation, but more importantly a cent is our lowest legal currency.
See Table I:

Table I

FY	Alt. A	Alt B @ 7.5 to 1	Alt. B rounded to closest cent
1995	0.93	0.124	$0.12
1996	1.11	0.148	$0.15
1997	1.29	0.172	$0.17
1998	1.47	0.196	$0.20
1999	1.65	0.22	$0.22

In 1999 the ratio between Alternative A and Alternative B was 7.5 to 1. The USC states that all adjustments to the payments and ceilings will be calculated from the 1999 reference. The 7.5 to 1 ratio is absolute in this USC

Maximum payments allowed on Alternative A was 75 cents and Alternative B was 10 cents from 1977 to 1994 which is 7.5 to 1 ratio.
This continuance of the 7.5 to 1 ratio after 1994 is supported in the Congressional Research Service report 98-574: PILT (Payments in Lieu of Taxes):

Somewhat Simplified that states:
"Counties were largely united in wanting an increase in the PILT formula, but could not agree on language that would have changed the formula in the law fundamentally. Thus, rather than creating new winners and losers by adopting major reforms such as tax equivalency, the 1994 amendments simply lifted all ceilings and payment levels in the law."

And

"The amendment to PILT (P. L. 103-397) did little or nothing to change the relative rankings of counties' payment levels under the PILT formula."
What is interesting about the Congressional Research Service report 98-574 is that this was a reference used by the Department of Interior on guidelines for PILT in their reply to my protest. Certainly, if they recognize it as guidance for administering the PILT program, then they should follow it.

It is understandable to round to the nearest cent when increasing or decreasing payment by CPI, but they are in error more that just rounding. In 2007, their ratio was 7.19 to 1 at Alternative A funding of $2.23 per acre and Alternative B of 31 cents per acre. If $2.23 is the correct Alternative A level (that is questionable at this time), then Alternative B would have been $2.23 divided by 7.5 = 0.297 (rounded equals 30 cents). This error would not only make a significant difference in payments to local governments, but would also change the number of counties on Alternative A and B options; which in turn would have changed the prorate whether that was calculated on a national total or on an individual unit of local government. This is of great concern to me because it is the first indicator I recognized that shows that the BLM had not gone back to review, and follow USC when calculating the formula. One of the questions that arise time and time again is ..... How did they get to 2007 (or even 2008) with their CPI increases and are they accurate and comply with USC earlier?

AND

After the year of 2000 what were they using for a base to calculate 2001 and; in 2001 what did they use for a base to calculate 2002 ... etc ....etc?

The General Accountability Office has guidelines for agencies to use for PILT type programs.

"In the far more typical situation, however, Congress merely enacts a program and authorizes appropriations. For any number of reasons— budgetary constraints, changes in political climate, etc.—the actual funding may fall short of original expectations. What is an agency to do when it finds that it does not have enough money to accommodate an entire class of beneficiaries? Obviously, it can ask Congress for more. However, as any program administrator knows, asking and getting are two different things. If the agency cannot get additional funding and the program legislation fails to provide guidance, there is solid authority for the proposition that the agency may, within its discretion, establish reasonable classifications, priorities, and/or eligibility requirements, as long as it does so on a rational and consistent basis."

AND (they even use PILT as an example)

"A common form of appropriation funds a single program. For example, the Interior Department receives a separate appropriation to carry out the Payments in Lieu of Taxes Act (PILT), 31 U.S.C. § 6901–6904.[3] While the appropriation is specific in the sense that it is limited to PILT payments and associated administrative expenses, it is nevertheless necessary to look beyond the appropriation language and examine the PILT statute to determine authorized expenditures."

The above statements from GAO state the importance of following the intent, being rational, and being consistent with United States Code when funding is not at full or authorized appropriation.

Answer and Conclusion of Question #1: The ratio has been constant in P. L. 94-565, P.L. 97-258, and P.L. 103-397. That ratio must be 7.5 to 1 no matter what the payment level authorized or actual funding.

Question #2: When the PILT Code and Regulation are using the word "payment"; in what context and definition are they using the word?
United States Code states:

"(b)(1) A payment under section 6902 of this title is equal to the greater of--
(A) 93 cents during fiscal year 1995, $1.11 during fiscal year 1996, $1.29 during fiscal year 1997, $1.47 during fiscal year 1998, and $1.65 during fiscal year 1999 and thereafter, for each acre of entitlement land located within a unit of general local government (but not more than the limitation determined under subsection (c) of this section) reduced (but not below 0) by amounts the unit received in the prior fiscal year under a payment law; or
(B) 12 cents during fiscal year 1995, 15 cents during fiscal year 1996, 17 cents during fiscal year 1997, 20 cents during fiscal year 1998, and 22 cents during fiscal year 1999 and thereafter, for each acre of entitlement land located in the unit (but not more than the limitation determined under subsection (c) of this section)."

The USC guidelines speak of "payment" on a per acre basis. The Alternative A states it as not just PILT, but the sum of PILT plus Prior Year Payments (federal revenue sharing from previous year) and Alternative B states that it is totally PILT payments. I stress that "payment" means on a per acre basis on a singular local government.

It also states: "within a unit of general local government". USC direction is singular and not plural. In my already recorded protest and appeal, I speculated that the problem with the prorate had been recognized and an attempt to correct that problem was made through a new Regulation. If that is true ....then it is true. But if that is false then they did not follow their original and current regulation anyway.... Their intent in regulation has no bearing on this protest, but rather:

1. Is the regulation consistent with the United States Code?
2. Is the Department following the regulation?

Old Regulation:

"1881.1-1 Procedures, general
(b) If money actually appropriated by Congress for distribution during any fiscal year is insufficient to provide full payment to each local government, all payments to eligible recipients in that fiscal year shall be reduced proportionally to the extent determined necessary by the authorized officer."

AND

New Regulation

"44.51 Are there general procedures applicable to all PILT payments?
(b) If Congress appropriates insufficient monies to provide full payment to each local government during any fiscal year, the Department will reduce proportionally all payments in that fiscal year."

My understanding is that the definition and context of an identical word in the code and regulations must be the same if they are defining a specific term. Therefore "payment" in the Code defines what is considered "payment" in the regulations.

Answer and Conclusion of Question #2: The word "payment" is in the context of a per acre basis of PILT and PYP on the Alternative A side of the formula and on a PILT payment per acre basis on the Alternative B side of the formula. Therefore, the Departments regulation when using that word must use it in the same context.

Question #3: Where is the correct place in the PILT calculation to prorate the funding when allocation is less than full appropriation?

Answers and Conclusions to Questions #1 and #2 answer question #3.

Old Reg.
"1881.1-1 Procedures, general
(b) If money actually appropriated by Congress for distribution during any fiscal year is insufficient to provide full payment each local government, all payments to eligible recipients in that fiscal year shall be reduced proportionally to the extent determined necessary by the authorized officer."

New Reg.
"44.51 Are there general procedures applicable to all PILT payments?
(b) If Congress appropriates insufficient monies to provide full payment to each local government during any fiscal year, the Department will reduce proportionally all payments in that fiscal year."

The Department did not interpret their own regulation guideline correctly. That is probably due to the original rule being in effect when full funding was available from 1977 to 1994. For this reason, the Department didn't need to look at the rule for an extended amount of time. As time goes by, they lost history of what the rule was defining. In 1995, when it was needed, they defined the "payments" as nationwide prorate. No one looked at statute closely to see what Congress was defining as "payments". Even though this may have been an honest mistake ..... it is still a mistake of monumental proportions to counties with federal land.

"(b)(1) A payment under section 6902 of this title is equal to the greater of--
(A) 93 cents during fiscal year 1995, $1.11 during fiscal year 1996, $1.29 during fiscal year 1997, $1.47 during fiscal year 1998, and $1.65 during fiscal year 1999 and thereafter, for each acre of entitlement land located within a unit of general local government (but not more than the limitation determined under subsection (c) of this section) reduced (but not below 0) by amounts the unit received in the prior fiscal year under a payment law; or
(B) 12 cents during fiscal year 1995, 15 cents during fiscal year 1996, 17 cents during fiscal year 1997, 20 cents during fiscal year 1998, and 22 cents during fiscal year 1999 and thereafter, for each acre of entitlement land located in the unit (but not more than the limitation determined under subsection (c) of this section)."

As the GAO states: **"it is nevertheless necessary to look beyond the appropriation language and examine the PILT statute to determine authorized expenditures".**

Unfortunately, the Department did not do that. It is also, very interesting that GAO used PILT appropriation in the example.

The United State Code and the Federal Regulation guide the Department to calculate each unit of local government individually and the ***payment*** is on a per acre basis within a local government's jurisdictional boundary no matter what the funding level.

AND

The Department's own regulation states that when "Congress appropriates insufficient monies" that they will "reduce proportionally" the "full payment" ..... that payment must prorate back the Alternative A and B per acre payment and also, to be consistent with the law, also prorate the population ceilings or caps. And, that same prorate on a per acre basis has to apply to every unit of local government.

In the Department's Answer to the Protest they state:
"We find no Congressional direction or intent in the PILT laws or in the legislative history that would support this assertion. It is true that the original PILT Act (P.L. 94-565) provided the original formula for Alternative A of 75 cents and Alternative B of 10 cents and at that point in time the ratio was 7.5 to 1. However, the amounts to be used to calculate Alternative A and B were modified by Congress in the 1994 Amendments at which point there was no longer a ratio of 7.5 to 1."

Then later in argument, the Department states:
"Notwithstanding the equitable concerns that have been presented to it, Congress deliberately chose to preserve the overall scheme of its original distribution formula, amending the formula in 1994 only to increase the per acre values and other factors by the rate of inflation."

The Interior Board of Land Appeals dismissed the appeal based on timeline and jurisdiction. Neither of these issue were used in argument by the Department ..... ever.